PART IV

SECTION 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR SECRETARIAT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of M/s. Manjunatha Motor Service (P) Ltd., Chikmagalur.

Award of the District Judge and *Ex-Officio* Presiding Officer, Labour Court, Chikmagalur, published.

Read the following papers :—

(1) Letter No. 10353/1970, dated 21st December 1970 from Sri S. B. Sawkar District Judge and *Ex-Officio* Presiding Officer, Labour Lourt, Chickmagalur.

IN THE COURT OF THE DISTRICT JUDGE AND *EX-OFFICIO* PRESIDING OFFICER, LABOUR COURT, CHIKMAGALUR.

Dated the 21st day of December 1970

PRESENT :

Sri S. B. Sawkar, LL.B.,

District Judge and Ex-Officio *Presiding Officer, Labour Court, Chikmagalur.*

REFERENCE No. 11 OF 1970

Ist Party—Sri S. Ameer, represented by the President Indian Plantation and General Workers' Union Chikmagalur.

Vs.

IInd Party—The Management of M/s. Manjunatha Motor Service (P) Ltd., Chikmagalur.

Reference No. 71/65 on the file of the Labour Court, Bangalore, since transferred and registered as No. 11/70.

Reference : Government Order No. LMA 488 LLD 65, dated 23rd November 1965.

ORDER

1. This is a reference made by the Government of Mysore of the dispute between the first party S. Ameer and the second party, the management of M/s. Manjunatha Motor Service, Private Ltd., Chikmagalur.

2. The points of dispute are as under :—

> "Whether the Management of Manjunatha Motor Service (P) Ltd., (Registered Office, Mangalore), Chikmagalur, are justified in dismissing Sri S. Ameer, Driver, from service on 18th April 1964. If not, Sri S. Ameer, entitled to reinstatement with back wages and continuity of service from that date or any other relief, if any ?"

3. The case of the first party is that he was working as a driver under the second party for about 25 years. The second party issued him a notice alleging certain false charges to which the first party and offered written explanation. Thereafter he was suspended on 18th April 1964 by the second party pending enquiry. The first party was then directed to attend the enquiry to be conducted at Mangalore by issuing him a notice. The first party pleaded

his inability to attend the enquiry at Mangalore and requested the second party to hold the same at Chikmagalur or in the alternative to pay an amount of Rs. 50 by way of advance to enable him to attend the enquiry at Mangalore with his witnesses. This request was turn down and the enquiry was held *ex parte* by the second party at Mangalore without offording opportunity to the first party to plead his case. The suspension order issued by the second party against the first party is also illegal. Hence this petition.

4. The second party by its counter statement filed in Court contended that the dispute referred to does not come under the purview of Industrial Disputes Act as it is an individual dispute. The first party was dismissed from service on 4th August 1964 prior to the amendment of Industrial Disputes Act by Act No. 35 of 1965 (hereinafter referred to as the Act) under which Section 2 was amended and a new Section 2-A was added to the Act. This Section 2-A has no restrospective effect. It came into force on first of December 1965. The reference thus is liable to be rejected on this ground alone. The first party was employed as a driver and while he was driving the bus MYC 3225 belonging to the management of the second party on 26th February 1964, he did not stop the bus to pick up passengers in spite of the fact that there were vacant seats and the conductor had signalled to stop the same to enable passengers to get down, from the bus as also for those to get into the bus,—thus resulting in the loss of revenue of the management. On 12th April 1964, the first party refused o drive the Bus MYC 3222 on the ground that the brakes of the said vehicle were defective though they were in order and had been specially repaired on that day at his request. Since his explanations were not satisfactory, the manage ment held an equiry against him after giving him due notice to be present and to take part in the said enquiry. All facilities were provided to him to participate in the enquiry. He was also given free pass to enable him to attend the enquiry and return to his head quarters. He was informed that he was entitled to the allowance according to the rules

and his witnesses also would be given similar facility and that the enquiry was adjourned to 15th July 1964 at 9 A.M., in the Head quarters at Mangalore. The enquiry was held according to the accepted principles of natural justice. After enquiry the Enquiry Officer submitted his report that the charges framed against the first party were proved. On the basis of this report and the other relevant papers and gravity of the misconduct of the first party, the management dismissed him from service from the date of suspension that is 4th August 1964. The enquiry thus held is legal and proper and is binding on the first party. During the period of suspension, he was employed in M/s. Khaleel Motor Service, Chikmagalur.

5. On these pleadings, the following issues were framed :—

(1) Whether the management of Manjunatha Motor Service (P) Ltd., (Registered Office, Mangalore), Chikmagalur, are justified in dismissing Sri S. Ameer, Driver (First party) from service on 18th April 1964 ? If not, is Sri S. Ameer, entitled to re-instatement with back wages and continuity of service from that date or any other relief, if any ?

(2) Is the dispute an industrial dispute and the reference vaild ?

Or

Is it an industrial dispute ?

(3) Has this Court jurisdiction to adjudicate on the reference ?

(4) Is the enquiry by the 2nd party illegal and not binding on the first party ?

(5) Is the suspension order illegal ?

(6) What order ?

6. My findings are :—

(1) "Yes" as to the first part of the issue and 'no' as to the second part.

(2) No, it is not an industrial dispute and the refer ence is not valid.

(3) No.

(4) No. It is legal and binding.

(5) No. It is legal.

(6) As per order below.

REASONS

7. The case was fixed for hearing after framing the issues on 17th November 1970. On that day, no documents were produced by the second party and the case was posted for evidence by 16th December 1970. The first party was remained absent since 17th April 1970. Court notice had been issued to tim by registered post and he was served personally on 4th April 1970. He has not stepped into the witness box to even formally swear to his grievances against the second party and to the dispute between the two.

8. One N. U. Bamgera has been examined on behalf of the second party in support of their case. He was appointed as an Enquiry Officer by the second party to go into the charges levelled against the first party who was working as driver in the management of the second party. He issued notice to the first party by registered post as per Ex. R-5. The reply sent by the first party to it is at Ex. R-6. He was also issued a pass and enquiry was fixed to be held on 15th July 1964. But on that date he remained absent and so the enquiry had to be held *ex parte*. He held enquiry on 15th July 1964. He recorded the statements of witnesses. The charges against the first party were that he did not stop the bus to allow the passengers to get in on the way and to get down and on 12th April 1964, he disobeyed the directions of the management to take the bus on service. Both these charges were according to the Enquiry Officer R.W. 1 proved against the first party and he has submitted his detailed report in that behalf as per

Ex. R-1 to the Director Sri V. S. Kuduva. He then finally passed the orders terminating the services of the first party as per Ex. R-2. The same is communicated to him as per original of Ex. R-3. Ex. R-7 is the refusal of the first party to take the vehicle. Ex. R-8 is the memo calling for his explanation. Ex. R-9 is the final charge sheet issued to him. Ex. R-10 is the explanation submitted by the first party. Ex. R-11 is the copy of the enquiry notice issued to him. Ex. R-12 is the postal acknowledgment. Ex. R-13 is the reply sent by the first party. Ex. R-14 is the *notice issued* to the first party and Ex. R-15 is the *postal* acknowledgment. When the notice of enquiry was issued, the management of second party learnt that the first party was already under the services of one Khaleel Motor Service at Chickmagalur, and the notice was issued to that address. He has also sworn that the charges against the first party were grave.

9. I have carefully gone through the documents produced in this case, to which I have referred to in detail above. The charges against the first party as sworn to by R.W. 1 are really grave. He has caused loss to the management by not stopping the vehicle on the way to take the passengers. He has also caused inconvenience to the passengers in the bus who were to get down at any particular place on the way. Further, his disobedience of the directions given by the management to drive the vehicle on 12th April 1964 is clearly without any justification at all, particularly when the vehicle which he was supposed to drive on that day had its brakes duly repaired specially for him as sworn to by R.W. 1. There is nothing on record on behalf of party No. 1 to show that the enquiry held by R.W. 1 is in any manner opposed to natural justice. On the contrary, all opportunities had been afforded to the first party to be present at the time of enquiry at Mangalore and plead his case and defend himself. If he has failed to do so, he must thank himself. Looking to the grave charges levelled against the first party, and on going through the report submitted by R.W. 1, after the enquiry held by him,

I find that the action taken by the management in suspending in the first instance and dismissing him from service after the enquiry Officer submitted his report, are quite justified and legal. The first party has clearly failed to prove that the suspension or the dismissal by the second party are not legal or are opposed to natural justice. He is not entitled to any re-instatement as claimed by him. Since he was already in service at the time when the notice of enquiry was served on him with Khaleel Motor Service at Chickmagalur, he is not entitled to any back wages as claimed by him. Hence my findings on issues 1, 4 and 5 accordingly.

10. The provisions of Section 2-A of the Industrial Disputes Act, as amended as per Act 35 of 1965, (19th November 1965) came into force on 1st December 1965. The first party was dismissed from service by the second party on 4th August 1964. This is evidently prior to the coming into force of the amended Section 2-A of the Act. The dispute as between the first party and the second party prior to the coming into force of the amended Section 2-A of the Act, would be clearly an individual dispute and it cannot be an industrial dispute. In that view of the matter, therefore, the reference of the dispute as between the two as made by the Government of Mysore is not valid as it is not an industrial dispute at all. In that view of the matter, therefore, this Court has no jurisdiction to entertain the reference in question. I, therefore, record my findings on issues 2 and 3 accordingly

11. In the result, from any point of view, the reference fails and the same has to be rejected. I, therefore pass the following order.

ORDER

Reference is rejected. No order as to costs.
Dictated to the stenographer, transcribed and then pronounced in open Court this 21st December 1970.

S. B. SAWKAR,
District Judge and Ex-Officio *P.O.*
Labour Court, Chikmagalur.

'True Copy'

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District Judge and
Ex-Officio *Presiding Officer,*
Labour Court, Chikmagalur

ORDER

Bangalore, dated the 5th January 1971.

S.O. 179.—WHEREAS by the State Government Order No. LMA 488 LLD 65, dated 23rd November 1965 the Industrial Dispute between the Workmen and the Management of M/s. Manjunatha Motor Service (P) Ltd., Chikmagalur was referred to the Labour Court, Chikmagalur for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. FCL 285 LLA 70].

By Order and in the name of the Governor of Mysore

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour
Department.